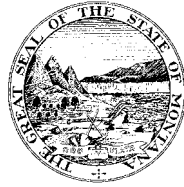


LEGISLATIVE AUDIT DIVISION

Scott A. Seacat, Legislative Auditor
John W. Northey, Legal Counsel



Deputy Legislative Auditors:
Jim Pellegrini, Performance Audit
Tori Hunthausen, IS Audit & Operations
James Gillett, Financial-Compliance
Audit

MEMORANDUM

TO: Legislative Audit Committee
FROM: Jim Pellegrini, Deputy Legislative Auditor, Performance Audits
DATE: April 2005
RE: Follow-up Performance Audit 05SP-017
Highway and Bridge Construction Contract Claims Process (orig. 02P-11)

INTRODUCTION

A performance audit report of the Highway and Bridge Construction Contract Claims Process was issued in March 2003. The objectives of our audit were to:

- Determine how claims impact department and contractor operations.
- Determine if the contract claims process is fair to contractors while still protecting the taxpayer's investment.
- Determine if the department's claims process is efficient and if any changes are needed in the current process.

The performance audit report contained four recommendations that included seven recommended actions for improvements.

Overview

The Montana Department of Transportation (MDT) has implemented five of the seven recommendations. The department has made procedural changes to both the contract claims process and scheduling for the Board of Contract Appeals, which have simplified and sped up the process. The department has also conducted numerous training sessions for construction personnel. The department has implemented temporary measures on the other two recommendations with final measures being completed by the end of the year. Follow-up work found changes made by the department has resulted in a more efficient contract claims process.

BACKGROUND

Contract claims are a normal part of the highway and bridge construction process to help the department and contractors settle disputes not easily resolved and determine if additional compensation to a contractor is warranted. Highway and bridge construction projects are complex construction projects that the Montana Department of Transportation (MDT) is responsible for managing. Despite the tremendous amount of work prior to the start of construction to design and to identify potential problem situations, unanticipated work often occurs on projects. Change orders are normally used to correct these unanticipated events. However, if an agreement cannot be reached, the contract claims process is the administrative process followed to handle these disagreements.

AUDIT CONCLUSIONS

Our audit identified a number of issues that limited the effectiveness of the claims process and kept MDT management from effectively administering claims.

- MDT did not have a claims information system that permitted for efficient administration of contract claims.
- Weaknesses in documentation made it difficult to determine how decisions on contract claims were made or whether the settlements were fair to all parties.
- There was little coordination between MDT districts, the construction bureau in Helena, and the Federal Highway Administration.
- The claims process was confusing and overly redundant.
- There was no consistency in the timeliness of the contract claims process.

SUMMARY OF FOLLOW-UP RESULTS

Our audit report made four recommendations with seven suggested changes to improve the contract claims process. The department has fully implemented five of these suggested changes and is proceeding with the implementation of the remaining two. The following sections provide MDT's steps to implement each of the recommendations.

Recommendation #1

We recommend the department:

A. Establish a database to compile management information regarding contract claims activity.

Status

Being implemented. MDT has established a spreadsheet to track all contract claims throughout the state. The spreadsheet provides a timeline of milestones relating to a particular claim and provides MDT managers with a summary of claims information throughout the state. This spreadsheet is considered a temporary solution for tracking claims until MDT information technology staff completes development of a database in fall 2005. The database is intended to augment and interface with the capabilities of a larger project management software system that will be implemented by MDT in 2007.

B. Train staff regarding claim documentation requirements.

Status

Implemented. MDT conducts an annual training conference at Montana State University in Bozeman. MDT provided training to improve the negotiating skills of construction project management staff in an effort to prevent disputes from becoming contract claims. The department has also sent project managers to contract claims training offered by the National

Highway Institute. As a result, at least 63 percent of all MDT project management staff has attended at least one course relating to contract claims since 2003. The actual percentage is probably higher, but the attendance rosters for the recently completed 2005 training conference have not been entered into employee records.

The department's efforts have provided current employees with the necessary training to effectively manage the contract claims process. However, the training program does not have either a process of identifying courses that should be completed by each position within the department, nor does it have any method of tracking employees to ensure that they have completed the necessary training. Without this level of detail the department will have difficulty ensuring that new employees, or employees transitioning to new positions, will have completed the training needed to be effective in their responsibilities. The new bureau training coordinator has indicated that this is a goal for the organization's training program.

C. Analyze the data collected to determine:

- a. The number of claims filed statewide and by district.**
- b. The reason claims were filed.**
- c. Which contractors are filing claims.**
- d. Claim cost and status.**

Status

Being implemented. The spreadsheet used by the Construction Engineering Services Bureau to track contract claims provides the basic information requested by this recommendation. Construction Engineering Services personnel manually complete analysis of individual claims. However, the spreadsheet lacks basic analysis tools available from more capable databases. According to MDT officials, project management software package planned for implementation in 2007 will have the tools necessary to better track and analyze contract claims data.

D. Establish a quality control process that includes claim file review to ensure claims are properly documented and valid.

Status

Implemented. All claims that are unresolved at the district level are referred to the Board of Contract Appeals. Once it is clear that the claim will proceed to the board, the Construction Bureau Chief assists districts in their efforts to gather all required documentation for the claim. Once all claim documentation is obtained, Construction Bureau staff analyze and summarize documents and submit a recommendation to the board regarding claim payment or denial. There is now a process to ensure there is sufficient organization and documentation associated with contract claims so the Board of Contract Appeals can complete deliberations and reach a decision on whether or not to approve a claim.

Recommendation #2

We recommend the department improve its claim specifications by removing repetitive steps and focusing on early negotiations of claim issues with contractors.

Status

Implemented. The department has re-issued Standard Specification 105.16, "Claims for Adjustment and Disputes." This specification has eliminated the need for the contractor to issue a "notice of potential claim" to the engineering project manager prior to filing a formal claim with the same individual. Both the Montana Contractors' Association and MDT district offices have indicated that this step alone eliminated a majority of the confusion associated with filing a

contract claim. The new specification also has established means for the district and the contractor to enter into non-binding arbitration to settle a claim. The claim process still requires the contractor to notify the engineering project manager of a claim in writing. If the project manager denies the claim, the contractor can then appeal that decision to the district construction engineer, and on to the Board of Contract Appeals.

To raise the effectiveness of pre-claim negotiations, MDT has conducted training to improve negotiating skills to over three-quarters of its project management staff. Additional training will be conducted in FY2005. Both MDT employees and contractors have commented that this training has been extremely effective.

Recommendation #3

We recommend the department review the value of placing bid documents in escrow and then:

- A. Eliminate the specification requiring documents be placed in escrow if their value is limited in negotiating contract claims, or**
- B. Establish a process to ensure all documents are provided when they are submitted to the department.**

Status

Implemented. The department had determined that there is value to placing certain required documents in an escrow after bid has been awarded. Discussions with the districts and the Montana Contractors' Association provided examples where bid documents have supported both state denials of claims and contractor award of claims. The bid document inventory was updated in January 2003 and is included in every request for bid that is advertised by MDT. Conversations with members of the Board of Contract Appeals, MDT districts, MDT headquarters personnel, and the Montana Contractors' Association all indicated that the value of the documents is determined by the thoroughness of the document preparation. If the contractor fails to put sufficient information into the development of the information included in the bid documents, then they will not assist him in proving his claim.

Recommendation #4

We recommend the department establish timelines for Board of Contract Appeal reviews within the department's Standard Specifications for Road and Bridge Construction.

Status

Implemented. New Standard Specification 105.16.3 states that the Board of Contract Appeals will be scheduled to meet quarterly. Follow-up work found the department is complying with this schedule. MDT officials and contractors have stated that this scheduling change has helped to speed up the contract claims process.